

AMENDED IN SENATE AUGUST 5, 2002  
AMENDED IN ASSEMBLY MAY 29, 2002  
AMENDED IN ASSEMBLY MAY 13, 2002  
AMENDED IN ASSEMBLY MAY 2, 2002  
AMENDED IN ASSEMBLY APRIL 29, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2297**

**Introduced by Assembly Member Simitian**

February 21, 2002

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An act to add Chapter 15.5 (commencing with Section 22575) to Division 8 of the Business and Professions Code, relating to privacy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2297, as amended, Simitian. Online Privacy and Disclosure Act of 2002.

Existing law does not regulate the security and confidentiality of consumer personal and identifying information obtained by persons and entities engaged in online business transactions.

This bill would require a person or entity ~~conducting business on an Internet Web site~~ that collects personal and identifying information from individuals *located in California* through the Internet to conspicuously post and ~~fully~~ comply with a privacy policy on its Web site that identifies the categories of information that it collects about individuals, and with whom the person or entity may share the information. The bill would ~~also generally require the person or entity~~

~~to notify each individual who may have been affected in the case of a breach of security that results in the disclosure of personal and identifying information in a manner not covered by the privacy policy provide that individuals or entities with fewer than 25 employees and who do less than 10% of their business with individuals located in California are exempt from the bill.~~ The bill would make findings and declarations and declare the intent of the Legislature in this regard.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. This act shall be known as, and may be cited as,
- 2 the Online Privacy and Disclosure Act of 2002.
- 3 SEC. 2. The Legislature finds and declares all of the
- 4 following:
- 5 (a) Each person or entity that engages in online business has a
- 6 continuing and affirmative obligation to respect and uphold the
- 7 privacy of individuals and to protect the security and
- 8 confidentiality of the individuals' personal and identifying
- 9 information.
- 10 (b) It is the intent of the Legislature, in enacting this act, to
- 11 provide enhanced consumer protections and remedies relative to
- 12 the disclosure of personal and identifying information obtained
- 13 online.
- 14 (c) It is the intent of the Legislature to require persons and
- 15 entities engaged in online business to provide individuals with
- 16 notice of their online privacy rights and improved and more
- 17 meaningful choices as to whether personal and identifying
- 18 information may be disclosed, sold, or shared.
- 19 (d) It is the intent of the Legislature to protect the
- 20 constitutionally guaranteed right to privacy of Californians who
- 21 spend time or conduct business on the Internet, while also fostering
- 22 the continued growth of electronic commerce. While this act does
- 23 not fully fulfill California's constitutional guarantee of privacy,
- 24 giving meaningful and reliable notice to consumers will empower
- 25 them to make knowledgeable choices about how to safeguard their
- 26 personal and identifying information.
- 27 (e) It is the intent of the Legislature that Internet service
- 28 providers or similar entities responsible for transmitting data shall



1 have no obligations under this act relative to disclosures related to  
2 personal and identifying information that they do not collect,  
3 maintain, or store.

4 SEC. 3. Chapter 15.5 (commencing with Section 22575) is  
5 added to Division 8 of the Business and Professions Code, to read:

6  
7 CHAPTER 15.5. INTERNET PRIVACY REQUIREMENTS  
8

9 22575. (a) A person or entity ~~conducting business on an~~  
10 ~~Internet Web site~~ that collects personal and identifying  
11 information about individuals *located in California* through the  
12 Internet shall ~~do both of the following~~:

13 ~~(1) Conspicuously~~ *conspicuously* post and ~~fully~~ comply with a  
14 privacy policy on its Web site that identifies the categories of  
15 information that it collects about individuals through the Internet,  
16 and with whom the person or entity may share the information.  
17 The privacy policy shall also do all of the following:

18 ~~(A)~~

19 *(1)* Disclose whether or not the person or entity maintains a  
20 process for an individual to review and request changes to his or  
21 her personal and identifying information that is collected in this  
22 manner, and if so, ~~shall~~ include a description of that process.

23 ~~(B)~~

24 *(2)* Explicitly state that the person or entity reserves the right  
25 to change its privacy policy without notice to the individual, if the  
26 person or entity, in fact, reserves that right.

27 ~~(C)~~

28 *(3)* Identify its effective date and provide a hyperlink to past  
29 privacy policies identified by their effective dates. *This chapter,*  
30 *however, shall not create a duty to reconstruct and post past*  
31 *privacy policies that were in existence prior to the operative date*  
32 *of this chapter.*

33 ~~(2) (A) In the case of a breach of security that results in the~~  
34 ~~disclosure of personal and identifying information in a manner not~~  
35 ~~covered by the privacy policy, the person or entity shall notify each~~  
36 ~~individual who may have been affected by the security breach and,~~  
37 ~~if known, the categories of information that were improperly~~  
38 ~~disclosed, and to whom the information was improperly disclosed.~~

~~(B) Notification required by this subdivision may be made by electronic mail as well as other means of communication with specific individuals.~~

~~(C) Notification under this subdivision is not required if a law enforcement agency determines that disclosure will impede an ongoing criminal investigation. However, notification shall be made when it no longer compromises the investigation.~~

~~(b) In cases in which a Web site operator and a Web site host are distinct persons or entities, both shall be required to comply with the requirements of this section. The person or entity responsible for the misuse of the data or that has experienced the security breach shall bear the responsibility of notification pursuant to paragraph (2) of subdivision (a).~~

~~(e)~~

*(b)* The term “personal and identifying information” means individually identifiable information about an individual collected online, including any of the following:

(1) A first and last name.

(2) A home or other physical address, including street name and name of a city or town.

(3) An e-mail address.

(4) A telephone number.

(5) A social security number.

(6) Any other identifier that permits the physical or online contacting of a specific individual.

(7) Information concerning a user that the Web site collects online from the user and combines with an identifier described in this subdivision.

~~(d)~~

*(c)* The term “conspicuously post” with respect to a privacy policy shall include posting the privacy policy through any of the following:

(1) A Web site *page* on which the actual privacy policy is posted *if the Web page is the homepage or first significant page after entering the Web site.*

(2) An icon that hyperlinks to a Web site on which the actual privacy policy is posted, if the icon is located on the home page or the first significant page after entering the Web site, and if the icon contains the word “privacy.” The icon shall also use a color that contrasts with the background color of the Web page.

1 (3) A text link that hyperlinks to a Web site on which the actual  
2 privacy policy is posted, if the text link is located on the home page  
3 or first significant page after entering the Web site, and if the text  
4 link does one of the following:

5 (A) Includes the word “~~privacy~~,” is “*privacy*” in a type size no  
6 smaller than the type size of the majority of the remainder of the  
7 page, and is located either at the bottom of the page or in the  
8 left-most column.

9 (B) Is written in capital letters equal to or greater in size than  
10 the surrounding text, or in contrasting type, font, or color to the  
11 surrounding text of the same or lesser size.

12 (C) Is written in larger type than the surrounding text, or in  
13 contrasting type, font, or color to the surrounding text of the same  
14 size, or set off from the surrounding text of the same size by  
15 symbols or other marks that call attention to the language.

16 (4) Any other functional hyperlink that is so displayed that a  
17 reasonable person would notice it.

18 (d) *Individuals or entities with fewer than 25 employees and*  
19 *who do less than 10 percent of their business with individuals*  
20 *located in this state are exempt from this chapter.*

